IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2116 OF 2004

Indirabai P. Shelar & Ors.)..PETITIONERS

Versus

The State of Maharashtra & Ors.)..RESPONDENTS

Mr.A.K. Abhyankar withMr. Divesh Chamboowala for the Petitioners.
Mr. Milind More, A.G.P. for Respodnent Nos. 1 to 4.
Mr. Rajesh C. Shah with Mr. C.D. Patel i/b. J.B. Patel for Applicant in Chamber Summons No.260 of 2004.

CORAM: F.I. REBELLO J.
DATE :13th December, 2004

P.C.:

. Rule. Heard forthwith.

2. The petitioners impugn the order dated 29th April, 2004 passed by the Tribunal under the Slums Act whereby the Appeal preferred by them challenging the notification declaring their property as slum has been rejected.

3. The petitioners herein preferred an Appeal which was allowed by order dated 15th September, 2003 and the slum declaration was set aside. There is a further noting in the order that on 15th September, 2003 as the petitioners had left after pronouncement of the order the matter was kept on 16th September, 2003 for rehearing under the provisions of Order 41 Rule 21 of the Code of Civil Procedure. After notice the petitioners herein were heard in the matter. The learned Tribunal proceeded on the footing that subsequent to the declaration of the area as slum there was a notice published

for acquisition under Section 14(1) of the Maharashtara Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and consequently any proceedings including the Appeal filed by the Appellants on 10th February, 2003 is rendered infructuous from its inception.

4. On behalf of the petitioners their learned Counsel firstly contends that the learned Tribunal could not have exercised the power of review as the order after pronouncement really amounts to review. For that purpose reliance is placed on the judgment of the learned Single Judge of this Court in **Kuwarben Chhabildas Patel through her C.A. Pratapsingh Chhabildas Patel vs. State of Maharashtra & Ors., 2003 (3) Mh.L.J.948.** It is further submitted that merely because notices for acquisition were issued under Section 14 of the Slum Act it would not mean that if otherwise the notification issued for declaring the area as slum was a nullity, not competent by issuance of Notification under Section 14, the defect would be cured and the remedy of the party aggrieved would be extinguished.

5. After hearing the learned Counsel the first question that has to be considered is whether it was open to the learned Tribunal to have reviewed the matter considering the provisions of the Act. The power of substantive review has to be conferred on the Tribunal and if not so conferred cannot be exercised by the Tribunal. This, however, is not so in a case of procedural review which is inherent in every Court or

Tribunal to do justice. See Grindlays Bank Vs. Central Government Industrial Tribunal & Ors., AIR 1981 SC 606.

Gainful reference may be made to the following paragraph:-

> 6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental,l or ancillary powers unless there is any indication in the statue to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary."

Apart from that a perusal of the impugned order would disclose that the Tribunal has not really exercised any power of substantive review, but has proceeded under Order 41 Rule 27 of the Code of Civil Procedure i.e. the power of the Appellate Court while hearing on Appeal. The learned Counsel draws my attention to the provisions of Section 45 of the Act which sets out that which powers under the C.P.C. can be

exercised by a Civil Court. The language of Section 45 would show that apart from the specific powers conferred, the Tribunal can also exercise any other power of Civil Court which are vested in the Tribunal. The power to set aside an order passed exparte would be a power vested in the Tribunal. A perusal of the order first made on 15th September, 2003 will show that it was passed in the absence of the parties. In other words it was exparte. If that be so, whatever be the language used by the Tribunal, as it could exercise the power of procedural review including setting aside an exparte order, that power could have been exercised. The first contention as canvassed on behalf of the Respondents will have to be rejected.

6. Dealing with the second contention the Tribunal has proceeded on the footing that once a notification under Section 14 of the Act is issued any Appeal which may have been preferred becomes infructuous. Under Section 14(2) it is provided that when a notice as aforesaid is published in the Official Gazette, the land shall, on and from the date on which the notice is so published, vest absolutely in the State Government free from all encumbrances. Relying on this provision the learned Appellate Tribunal has held that even a pending Appeal will have to be dismissed. The contention of the petitioners has been that if otherwise the order was passed which is nullity at law, the mere fact that subsequently the notification is published under Section 14(2) would be of no consequence and cannot result in denying a

party aggrieved by a null order of getting it so declared or to set it aside. Section 14(2) at the highest, it is contended, would protect only those notifications which otherwise in law are legal and valid. Respondents contend that once the land vested in the Government, the original owner has no right in the land and therefore the Tribunal was right in holding that the Appeal is maintainable.

. It is not necessary for me to go into that controversy considering that this aspect of the matter has really not been answered by the Tribunal. It will be open to the parties to raise the above contentions and all other contentions which in law are available to them before the learned Tribunal. The learned Tribunal to consider the said contentions and thereafter to dispose of the same according to law. In the light of that the following order:-

7. Rule made absolute to the extent that order dated 29th April, 2004 passed by the Respondent No.2 in Appeal No.15 of 2002 is set aside and the matter is remanded back to the Tribunal for rehearing in terms of the directions given above. In the circumstances of the case there shall be no order as to costs.

. Considering that there was status quo in favour of the petitioners during the pendency of the petition before this Court and as there was stay of the Notification of 30th August, 1977 and further considering that the matter is

remanded the stay order shall continue for a further period of four weeks from the date of the order if the petitioners are aggrieved by the final order.

. The Tribunal to dispose of the Appeal on or before 30th April, 2005.

. Parties/Authorities to act on an ordinary copy of this order duly authenticated by the Personal Secretary of this Court.

(F.I.REBELLO, J.)